

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #1	CCRB Case #: 201707048	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/02/2017 , Tuesday, 07/25/2017 4:49 PM	Location of Incident: Godwin Terrace and West 231st Street	Precinct: 50	18 Mo. SOL 1/25/2019	EO SOL 1/25/2019	
Date/Time CV Reported Sun, 08/06/2017 5:05 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 08/06/2017 5:05 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Mayko Matos	13660	957821	050 PCT
2. POM Richard Planamenta	820	957042	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Johan Hernandez	10107	956732	050 PCT
2. SGT Jordan Karras	4818	943426	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Planamenta	Abuse: PO Richard Planamenta stopped § 87(2)(b) and § 87(2)(b)	[REDACTED]
B.POM Mayko Matos	Abuse: PO Mayko Matos stopped § 87(2)(b) and § 87(2)(b)	[REDACTED]
C.POM Mayko Matos	Abuse: PO Mayko Matos frisked § 87(2)(b)	[REDACTED]
D.POM Mayko Matos	Abuse: PO Mayko Matos searched § 87(2)(b)	[REDACTED]

Case Summary

On August 6, 2017, § 87(2)(b) filed this complaint online with the CCRB.

On July 25, 2017, at approximately 4:49 p.m., § 87(2)(b) was standing with several friends of his, § 87(2)(b) and § 87(2)(b) at Godwin Terrace and West 231st Street, in the Bronx. The group was approached by PO Mayko Matos and PO Richard Planamenta, of the 50th Precinct, and they stopped § 87(2)(b) and § 87(2)(b) (**Allegations A and B – Abuse of Authority: § 87(2)(g)**). PO Matos frisked and searched § 87(2)(b) (**Allegations C and D – Abuse of Authority: § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b), § 87(2)(a) 160.50. § 87(2)(b)'s arrest was later voided, § 87(2)(b), § 87(2)(a) 160.50.

There is no video footage of this incident.

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: PO Richard Planamenta stopped § 87(2)(b) and § 87(2)(b)

Allegation (B) Abuse of Authority: PO Mayko Matos stopped § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

The stop of § 87(2)(b) and § 87(2)(b) is undisputed. § 87(2)(b) (Board Review 01) stated that he approached § 87(2)(b) and § 87(2)(b) and stood speaking with them on the sidewalk. § 87(2)(b) was smoking marijuana. § 87(2)(b) denied exchanging any items with § 87(2)(b) shaking hands with him, or having any physical contact with him whatsoever. § 87(2)(b) and § 87(2)(b) were then approached by PO Matos and PO Planamenta. § 87(2)(b) was placed under arrest for criminal possession of marijuana. The officers placed § 87(2)(b) in handcuffs, and then the officers immediately began searching § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) (Board Review 02) declined to provide a verified statement to the CCRB, but said in a phone statement that no one in the group had been smoking marijuana. He stated that he did not know why the officers had stopped them, and did not describe anything resembling a hand to hand drug transaction. Despite numerous attempts to contact them, neither § 87(2)(b) nor § 87(2)(b) provided statements to the CCRB.

PO Matos (Board Review 03) stated that he and PO Planamenta had gone to the area because that section of West 231st Street is a drug prone location, with a high incidence of drug arrests and complaints of drug activity. PO Matos observed § 87(2)(b) and § 87(2)(b) standing in a group. He did not recognize any of these individuals at this time. He then observed § 87(2)(b) and § 87(2)(b) reach towards each other with cupped fists and they appeared to be exchanging an object, although PO Matos could not see an object. Based on PO Matos' training and experience investigating drug activity, he recognized this as a hand to hand drug transaction, and decided to investigate it further. When he approached the group, PO Matos detected the strong odor of marijuana and noticed that § 87(2)(b) smoking what appeared to be a marijuana cigarette. He then started speaking with § 87(2)(b) and § 87(2)(b) about what they were doing in the area. PO Planamenta (Board Review 04) could

not recall why he and PO Matos approached the group, and stated that PO Matos was “in charge” during the incident.

In People v. Loper, the courts decided that the observance, by an officer with training and experience recognizing drug transactions, of individuals in a drug prone location exchanging unseen items provides a founded suspicion that the individuals have engaged in a drug transaction (People v Loper, 115 AD3d 875 [2014].) (Board Review 05). This level of suspicion justifies a common law inquiry, whereas officers need reasonable suspicion in order to stop an individual (People v De Bour, 40 NY2d 210 [1976]) (Board Review 17).

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: PO Mayko Matos frisked § 87(2)(b)

Allegation (D) Abuse of Authority: PO Mayko Matos searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) stated that PO Matos immediately placed § 87(2)(b) in handcuffs after approaching them, and began to search the pockets of his pants. PO Matos instructed PO Planamenta to search § 87(2)(b) and he did so, entering § 87(2)(b)'s pants pockets and then his gym bag. After PO Planamenta's search, PO Matos approached § 87(2)(b) and searched his pockets and then placed him in handcuffs. § 87(2)(b) testimony was consistent with § 87(2)(b)'s. He stated that PO Matos approached and searched both him and § 87(2)(b) and also that he was ordering other officers to conduct searches as well.

PO Matos stated that he frisked and searched § 87(2)(b) and provided the following explanations. He approached § 87(2)(b) with the intention of investigating the hand to hand. After placing § 87(2)(b) under arrest, PO Matos turned to § 87(2)(b) and started to speak to him. After a brief and innocuous conversation, PO Matos observed a bulge in § 87(2)(b)'s pants pocket. PO Matos could not describe this bulge in any detail. PO Matos frisked the bulge and then reached into the pocket to remove the object, which was a wallet. PO Matos opened the wallet and observed a pill inside. Finding the pill, which PO Matos could not identify at the time, PO Matos placed § 87(2)(b) under arrest for criminal possession of a controlled substance. Later, at the 50th Precinct stationhouse, PO Matos looked up the pill in an online database and determined that it was not a controlled substance, and so he voided § 87(2)(b)'s arrest and released him from custody. PO Planamenta could not recall details of the stop, and could not recall whether any searches or frisks were performed.

§ 87(2)(g)

§ 87(2)(g)

Police officers cannot conduct a search incident to arrest for the purposes of obtaining evidence of a crime, and the presence of probable cause to arrest does not permit the search of an individual in cases where there is no intent to arrest at the time of the search. In People v. Reid, the court determined that, even though an officer had probable cause to arrest an individual, he could not argue that he had the right to search him incident to arrest because he did not intend to arrest him at the time. This officer only decided to arrest the individual after finding contraband during the search (People v. Reid, 24 N.Y.3d 615 [2014]) (Board Review 07) (Board Review 16). An innocuous bulge in the pocket of someone's pants during an investigative detainment does not provide an officer with the requisite reasonable suspicion that someone is armed needed to perform a frisk. Furthermore, once a frisk is performed an officer must have a probable cause to believe that the object felt during the frisk was a weapon to then remove it from the pocket. In People v. Ventura, the court determined that the frisk of an individual was unlawful when, during a level 2 stop, an officer observed a shapeless bulge in an individual's jacket. Furthermore, the court determined that after feeling only that the object was hard during the frisk, the officer was not permitted to search the pocket to determine what caused the bulge (People v. Ventura, 139 A.D.2d 196 [1988]) (Board Review 08) (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous complaint with the CCRB. § 87(2)(b)
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- PO Planamenta has been the subject of seven other allegations of misconduct across two other CCRB cases during his three year tenure with the NYPD. Only one of these allegations concerned an improper stop, and it was exonerated. PO Planamenta has not been the subject of any substantiated CCRB allegations (Board Review 11).

- PO Matos has been the subject of fifteen other CCRB allegations across five other cases during his two year tenure with the CCRB. Five of these allegations have concerned improper stops or searches, but these have either been exonerated or have not yet been closed. PO Matos has been the subject of one substantiated CCRB allegation (Board Review 12):
 - In CCRB case 201610050, PO Matos was found to have improperly conducted a strip search of an individual. A command discipline was recommended by the CCRB, and the NYPD has yet to reach a disposition in the case.

Mediation, Civil and Criminal Histories

- Due to the multiple arrests related to this incident, the case was not suitable for mediation.
- As of December 22, 2017, no Notice of Claim related to this incident has been filed with the New York City Comptroller's Office (Board Review 13).
- § 87(2)(b) § 87(2)(c) [REDACTED]
- § 87(2)(b) § 87(2)(c) [REDACTED]

Squad No.: _____

Investigator:			
	Signature	Print Title & Name	Date

Squad Leader:			
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date